loss complained of was caused by fire while the plaintiff's goods were in transit by the defendant within the meaning of the exception in the bill of lading; that the defendant is not shown to have been guilty of any negligence by which the efficiency of the exception is, in any wise, impaired; and hence that the plaintiff is not entitled to recover.

Judgment will, therefore, be entered in favor of the defendant.

LEGAL NOTES.

The Supreme Court of the United States has recently decided several cases involving questions of great importance in constitutional law, and especially upon the scope of the 14th amendment of the Federal Constitution, and the power of Congress and of the United States Courts, under the amendment and the legislation in pursuance thereof. The cases are too long to be published in our pages in full, but as they have excited general attention we give below a rather full abstract of the principal ones.

THE FOURTEENTH AMENDMENT.—DENIAL OF CIVIL RIGHTS BY A STATE OFFICER.—HABEAS CORPUS.—*Ex parte The Commonwealth of Virginia and J. D. Coles.* Petition for a writ of habeas corpus.

The petitioner, Coles, was judge of a county court in Virginia, charged by the law of that state with the selection of jurors to serve in the circuit and county courts of his county, and in the year 1878, was indicted in the federal court for the Western District of Virginia, charged with excluding and failing to select as grand jurors and petit jurors certain citizens of his county, of African race and black color, said citizens possessing all other qualifications prescribed by law, and being excluded from the jury lists made out by him as such officer, on account of their race, color and previous condition of servitude, and for no other reason, against the peace, &c., of the United States, and against the form of the statute in such case made and provided. Being in custody, under that indictment, he presented this petition for a writ of habeas corpus and a writ of certiorari to bring up the record of the inferior court, that he might be discharged, averring that the finding of the indictment, and his arrest and imprisonment thereunder, were unwarranted by the Constitution of the United States, in violation of his rights and the rights of Virginia, whose judicial officer he was, and that the inferior court had no jurisdiction to proceed against him. A similar petition was presented by the state of Virginia. The court, STRONG, J., delivering the opinion, *held:*

1. That while a writ of habeas corpus cannot generally be made to subserve the purposes of a writ of error, yet when a prisoner is held without any lawful authority, and by an order beyond the jurisdiction of an inferior federal court to make, this court will, in favor of liberty, grant the writ, not to review the whole case but to examine the authority of the court below to act at all.

2. The section of the Act of March 1st 1875 (18 Stat. 336), which enacts that "no citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified from service as grand or petit juror in any court of the United States, or of any state, on account of race, color or previous condition of servitude; and any officer or other person, charged with any duty in the selection or summoning of jurors, who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than $5000," examined, and held to be authorized by the 13th and 14th amendments of the Constitution, for the enforcement of which Congress is given power to to pass appropriate legislation.

3. The inhibition contained in the 14th amendment means that no agency of the state, nor of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever by virtue of public position under a state government deprives another of property, life or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition, and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state. Otherwise the constitutional inhibition has no meaning, and the state has clothed one of its agents with power to annul or evade it.

4. The constitutional amendment was ordained for a purpose. It was to secure equal rights to all persons; and to insure to all persons the enjoyment of such rights, power was given to Congress to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated a state, but upon the persons who are the agents of the state in the denial of the rights which were intended to be secured. Such is the Act of March 1st 1875, and it is fully authorized by the Constitution.

5. The act of the defendant in selecting jurors was a ministerial, not a judicial act, and being charged with the performance of that duty, although he derived his authority from the state, he was bound, in the discharge of his duties, to obey the Federal Constitution and the laws passed in pursuance thereof.

FIELD and CLIFFORD, JJ., dissented.

CONSTITUTIONAL LAW.—THE FOURTEENTH AMENDMENT.—DENIAL OF EQUAL CIVIL RIGHTS BY A STATE.—REMOVING CASES OF SUCH ALLEGED DENIAL TO THE FEDERAL COURTS.

In *Taylor Strauder* v. *The State of West Virginia*, the plaintiff in error, a colored man, was indicted for murder in the Circuit Court of Ohio county, in West Virginia, and upon trial was convicted and sentenced. The record was then removed to the Supreme Court of the state, and there the judgment of the Circuit Court was affirmed.

In the Circuit Court of the state, before the trial of the indictment was commenced, the defendant presented his petition, verified by his oath, praying for a removal of the cause into the Circuit Court of the United States, assigning as ground for the removal, that "by virtue of the laws of the state of West Virginia, no colored man was eligible to be a member of the grand jury or to serve on a petit jury in the state;

that white men are so eligible, and that by reason of his being a colored man and having been a slave, he had reason to believe and did believe he could not have the full and equal benefit of all laws and proceedings in the state of West Virginia for the security of his person as is enjoyed by white citizens, and that he had less chance of enforcing in the courts of the state his rights on the prosecution, as a citizen of the United States, and that the probabilities of a denial of them to him as such citizen, on every trial which might take place on the indictment in the courts of the state, were much more enhanced than if he was a white man." This petition was denied by the state court, and the cause was forced to trial.

This was now a writ of error to the Supreme Court of Appeals of West Virginia. The conclusions of the court, as set forth in the opinion by STRONG, J., were as follows:

1. The 14th amendment of the Federal Constitution is one of a series of constitutional provisions having a common purpose, namely, to secure to a race recently emancipated, and held in slavery through many generations, all the civil rights that the superior race enjoy, and to give to them the protection of the general government, in the enjoyment of such rights, whenever they should be denied by the states. Whether it had other, and if so, what purposes, not decided.

2. The amendment not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any state the power to withhold from them the equal protection of the laws, and invested Congress with power, by appropriate legislation, to enforce its provisions.

3. The words of the amendment, although prohibitory, contain a necessary implication of a positive immunity, or right, most valuable to the colored race—the right to exemption from unfriendly legislation against them distinctively as colored—exemption from discriminations, imposed by public authority, implying legal inferiority in civil society, lessening the security of their rights, and which are steps towards reducing them to the condition of a subject race.

4. The statute of West Virginia, which, in effect, singles out and denies to colored citizens the right and privilege of participating in the administration of the law, as jurors, because of their color, though qualified in all other respects, is, practically a brand upon them, affixed by the law, and is a discrimination against that race forbidden by the amendment. It is a denial of the equal protection of the laws to the race thus excluded, since the constitution of juries is a very essential part of the protection which the trial by jury is intended to secure. The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine, that is, of persons having the same legal status in society as that which he holds.

5. Where, as here, the state statute secures to every white man the right of trial by jury selected from, and without discrimination against his race, and at the same time permits or requires such discrimination against the colored man because of his race, the latter is not equally protected by law with the former.

6. Sect. 641 of the Revised Statutes, which declares that "when any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the state, or in the part of the state where

such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, * * * such suit or prosecution may, upon the petition of such defendant, filed in said state court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed, for trial, into the next Circuit Court to be held in the district where it is pending," considered and held not to be in conflict with the Federal Constitution.

FIELD and CLIFFORD, JJ., dissented.

THE FOURTEENTH AMENDMENT.—DIRECTED AGAINST THE ACTION OF THE STATES, NOT OF PRIVATE INDIVIDUALS.—DENIAL OF CIVIL RIGHTS.—*Ex parte The Commonwealth of Virginia*, was a petition by the state for a mandamus.

The questions presented in this case arose out of the following facts: Burwell Reynolds and Lee Reynolds, two colored men, were jointly indicted for murder, and having been brought on for trial in the Circuit Court of the state, the defendants moved the court that the venire, which was composed entirely of the white race, be modified so as to allow one-third thereof to be composed of colored men. This motion was overruled on the ground that the court "had no authority to change the venire, it appearing (as the record stated) to the satisfaction of the court that the venire had been regularly drawn from the jury-box according to law." Thereupon the defendants, before the trial, filed their petition, duly verified, praying for a removal of the case into the Circuit Court of the United States for the Western District of Virginia. This petition represented that the petitioners were negroes, and that the man whom they were charged with having murdered was a white man. It further alleged that the right secured to the petitioners by the law providing for the equal civil rights of all the citizens of the United States was denied to them in the judicial tribunals of the county of Patrick, of which county they are natives and citizens; that by the laws of Virginia all male citizens, twenty-one years of age, and not over sixty, who are entitled to vote and hold office under the constitution and laws of the state, are made liable to serve as jurors: that this law allows the right as well as requires the duty, of the race to which the petitioners belong to serve as jurors; yet that the grand jury who found the indictment against them, as well as the jurors summoned to try them, were composed entirely of the white race. The petitioners further represented that they had applied to the judge of the court, to the prosecuting attorney, and to his assistant counsel, that a portion of the jury by which they were to be tried should be composed in part of competent jurors of their own race and color, but that this right had been refused them. The petitioners further represented that their race had never been allowed the right to serve as jurors, either in civil or criminal cases, in the county of Patrick, in any case civil or criminal in which their race had been in any way interested. They therefore prayed that the prosecution might be removed into the Circuit Court of the United States. The state court denied this prayer, and proceeded with the trial, when each of the defendants was convicted. The verdicts and judgments were, however, set aside, and a motion for a removal of the case was renewed on the same petition, and again denied. The defendants were then tried again separately. One was convicted and sentenced, and a bill of

exceptions was duly signed and made part of the record. In the other case the jury disagreed.

In this stage of the proceedings a copy of a record was obtained, the cases were, upon petition, ordered to be docketed in the Circuit Court of the United States, November 18th 1878, which was at its next succeeding term after the first application for removal, and a writ of habeas corpus *cum causa* was issued, by virtue of which the defendants were taken from the jail of Patrick county into the custody of the United States marshal, and they are now held in jail subject to the control of that court.

No motion was made in the Circuit Court to remand the prosecutions to the state court, but the Commonwealth of Virginia applied to this court for a rule to show cause why a mandamus should not issue commanding the judge of the District Court of the Western District of Virginia, the Hon. ALEXANDER RIVES, to cause to be re-delivered by the marshal of said district to the jailor of Patrick county the bodies of the said Lee and Burwell Reynolds, to be dealt with according to the laws of the said Commonwealth. The rule was granted, and Judge RIVES returned an answer setting forth substantially the facts hereinbefore stated, and averring that the indictments were removed into the Circuit Court of the United States by virtue of section 641 of the Revised Statutes.

The Supreme Court by, STRONG, J., awarded the mandamus, and announced the following conclusions:

1. Sect. 641 of the Revised Statutes, which provides for the removal into the federal court of any civil suit or prosecution, "commenced in any state court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the state or in the part of the state where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States," &c., examined in connection with sections 1977 and 1978. *Held*, that the object of these statutes, as of the constitution which authorized them, was to place the colored race, in respect of civil rights, upon a level with whites. They made the rights and responsibilities, civil and criminal, of the two races exactly the same.

2. The prohibitions of the 14th amendment have reference to state action exclusively and not to any action of private individuals. It is the state which is prohibited from denying to any person within its jurisdiction the equal protection of the laws, and consequently the statutes partially enumerating what civil rights colored men shall enjoy equally with white persons, founded as they are upon the amendment, are intended for protection against state infringement of those rights. Sect. 641 was also intended for their protection against state action and against that alone.

3. A state may act through different agencies, either by its legislative, its executive or its judicial authorities, and the prohibitions of the amendment extend to all actions of the state denying equal protection of the laws, whether it be action by one of these agencies or by another. Congress, by virtue of the 5th section of the 14th amendment, may enforce the prohibitions whenever they are disregarded by either the legislative, the executive or the judicial department of the state. The mode of enforcement is left to its discretion. It may secure the right,

that is, enforce its recognition by removing the case from a state court, in which it is denied, into a federal court where it will be acknowledged.

4. But the 14th amendment is broader than the statute which authorizes the removal. Sect. 641 does not apply to *all* cases in which equal protection of the laws may be denied to a defendant. The removal authorized by the statute is a removal before trial or final hearing. But the violation of the constitutional prohibition, when made by the judicial action of a state, may be and generally will be after the trial or final hearing has commenced. It is during the trial or final hearing the defendant is denied equality of legal protection and not until then. Nor can he know until then that the equal protection of the laws will not be extended to him. Certainly not until then can he affirm that it is denied. To such a case, that is, to judicial infractions of the constitutional amendment made after the trial has commenced, sect. 641 has no applicability. It was not intended to reach such cases. They were left to the revisory power of this court.

5. Therefore the denial or inability to enforce in the judicial tribunals of a state rights secured to a defendant by any law providing for the equal civil rights of all persons citizens of the United States, of which section 641 speaks, is primarily, if not exclusively, a denial of such rights, or an inability to enforce them, resulting from the constitution or laws of the state, rather than a denial made manifest at the trial of the case. In other words, the statute has reference to a legislative denial or an inability resulting from it. By express requirement of the statute, the party must set forth, under oath, the facts upon which he bases his claim to have his case removed, not merely his belief that he cannot enforce his rights at a subsequent stage of the proceedings. But in the absence of constitutional or legislative impediment, he cannot swear before his case comes to trial, that his enjoyment of his civil rights is denied to him.

6. The constitution and laws of Virginia do not exclude colored citizens from service on juries. The petition for removal did not present a case for removal under the 641st section.

7. The defendant in this case moved in the state court that the venire be so modified that one-third or some portion of the jury should be composed of his own race. The denial of that motion was not a denial of a right secured to him by any law providing for the equal civil rights of citizens of the United States, or by any statute, or by the 14th amendment. A mixed jury in a particular case is not essential to the equal protection of the laws. It *is* a right to which any colored man is entitled, that in the selection of jurors to pass upon his life, liberty or property, there shall be no exclusion of his race, and no discrimination against them because of his color. But that is a different thing from that which was claimed, as of right, and denied in the state court, viz., a right to have the jury composed in part of colored men.

8. A mandamus does not lie to control judicial discretion, except when that discretion has been abused. But it may be used as a remedy where the case is outside of that discretion and outside the jurisdiction of the court or officer to which or to whom the writ is directed. One of its peculiar and more common uses is to restrain inferior courts and keep them within their lawful bounds.

FIELD, J., concurred specially in a separate opinion in which CLIFFORD, J., also joined.

THE JUDICIAL POWER OF THE UNITED STATES.—LEGISLATION PROTECTING THE OFFICERS OF THE GOVERNMENT.—REMOVAL OF CAUSES FROM STATE COURTS.—In *State of Tennessee* v. *Davis* the defendant was indicted for murder in the Circuit Court for Grundy county, and before the trial presented his petition to the Circuit Court of the United States for the proper district, praying for a removal of the case into that court, and praying for a *certiorari*, &c. The record having been returned, in compliance with the writ, a motion was made to remand the case to the state court, and, on the hearing of the motion, the judges were divided in opinion upon the following questions:

First. Whether an indictment of a revenue officer (of the United States) for murder, found in a state court, under the facts alleged in the petition for removal in this case, is removable to the Circuit Court of the United States, under section 643 of the Revised Statutes.

Second. Whether, if removable from the state court, there is any mode and manner of procedure in the trial prescribed by the Act of Congress.

And third. Whether, if not, a trial of the guilt or innocence of the defendant can be had in the United States Circuit Court.

This difference of opinion was certified to the Supreme Court, the opinion of which was delivered by STRONG, J., to the following effect:

1. Section 643 of the Revised Statutes of the United States, which declares that "when any civil suit or criminal prosecution is commenced in any court of a state, against any officer appointed under, or acting by, authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title or authority claimed by such officer or other person under any such law, * * * the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the Circuit Court next to be holden in the district where the same is pending, upon the petition of such defendant to said Circuit Court," &c., is not in conflict with the Federal Constitution.

2. A petition by one indicted for murder in a state court of Tennessee, for removal of the prosecution to the federal court, upon the grounds that, although indicted for murder, no murder was committed; that the killing was done in the petitioner's own necessary self-defence, to save his own life; that at the time when the alleged act for which he was indicted was committed he was, and still is, an officer of the United States, to wit, a deputy collector of internal revenue; that the act for which he was indicted was performed in his own necessary self-defence while engaged in the discharge of his duties as deputy collector, and while acting by and under the authority of the internal revenue laws of the United States: that what he did was done under and by right of his said office; that it was his duty to seize illicit distilleries and the apparatus that is used for the illicit and unlawful distillation of spirits; and that while so attempting to enforce the revenue laws of the United States, as deputy collector as aforesaid, he was assaulted and fired upon by a number of armed men, and that in defence of his life he returned

the fire, which is the killing mentioned in the indictment, is in conformity with the statute, and upon being filed the prosecution was removed to the Circuit Court of the United States for that district.

3. The United States is a government with authority extending over the whole territory of the Union, acting upon the states and the people of the states. While it is limited in the number of its powers, so far as its sovereignty extends, it is supreme. No state can exclude it from exercising any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognisance of any subject which that instrument has committed to it.

4. The general government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers. It can act only through its officers and agents, and they must act within the states. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a state court, for an alleged offence against the law of the state, yet warranted by the federal authority they possess, and if the general government is powerless to interfere at once for their protection—if their protection must be left to the action of the state court—the operations of the general government may at any time be arrested at the will of one of its members. No such element of weakness is to be found in the Constitution.

5. The judicial power of the United States, by the express words of the Constitution, extends "to *all* cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority."

6. That provision embraces alike civil and criminal cases arising under the Constitution and laws of the United States. (*Cohens* v. *Virginia*. 6 Wheat. 399.) Both are equally within the domain of the judicial power of the United States.

7. A case arises under the Constitution of the United States not merely where a party comes into court to demand something conferred upon him by the Constitution or by a law or treaty, but wherever its correct decision as to the rights or defence of either party depends upon the construction of either. It is in the power of Congress to give the Circuit Courts of the United States jurisdiction of such a case, although other questions of fact or of law may be involved in it.

8. If the case, whether civil or criminal, be one to which the judicial power of the United States extends, its removal to the Federal Court is no invasion of state domain. On the contrary, a denial of the right of the general government to remove them, to take charge of and try any case arising under the Constitution and laws of the United States, is a denial of the conceded sovereignty of that government over a subject expressly committed to it. It is a denial of a doctrine necessary for the preservation of the acknowledged powers of the government. The power to remove is as ample in criminal as in civil cases. The exercise of that power as to criminal prosecutions is seen in the Act of February 4th 1815 (3 Stat. 198), again in the Act of March 2d 1833 (4 Stat., ch. 57, sect. 3), and more recently, in the Act of July 13th 1866 (14 Stat. 171).

CLIFFORD, J., dissented and filed a separate opinion.